IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6030 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VANMALIBHAI VAJUBHAI BAROLIA - Petitioner(s)

Versus

LABOUR COURT CONSISTING OF ASHWIN DAVE & 2 - Respondent(s)

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Appearance :

MR DS VASAVADA for Petitioner No(s).: 1.

NOTICE NOT RECD BACK for Respondent No(s).: 1.
MR HASMUKH THAKKER for Respondent No(s).: 2,3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2005

ORAL JUDGMENT

1. Rule. Shri Hasmukh Thakker, learned advocate waives service of rule on behalf of the respondent. With the consent of the learned advocates for the

parties, the matter is taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner workman has challenged the legality and validity of the judgment and order passed by the Labour Court, Bhavnagar dated 10th September, 2004 passed in Recovery Application No.96 of 2000 in dismissing the same.

3. It is the case on behalf of the petitioner that he joined service of the respondent bank with effect from 1st March, 1969 and was appointed as the Supervisor and he attained the age of superannuation on 31st December, 1999. He filed Recovery Application before the Labour Court, Bhavnagar being Recovery Application No.96 of 2000 claiming the benefit of increments due under the Circular and the said application came to be resisted by the respondent management on the ground that the petitioner is not entitled to receive the benefits as departmental inquiry was pending. It appears from the record that after filing the written submissions, nobody remained

present on behalf of the respondent management and therefore, the Labour Court, Bhavnagar passed an order on 31st March, 2003. Feeling aggrieved and dissatisfied with the same, the respondent preferred Special Civil Application No.5144 of 2004 before this Court and the learned Single Judge of this Court allowed the said Special Civil Application vide judgment dated 26.4.2004 and remanded the matter to the Labour Court. On remand, the Labour Court, Bhavnagar dismissed the said application on the ground that the application under Section-33(C)(2) is not maintainable and if the petitioner is aggrieved of not releasing the increments due which according to the respondent management was due to pendency of the departmental inquiry, in that case he has to challenge the same before the appropriate forum. Being aggrieved and dissatisfied with the order passed by the Labour Court, Bhavnagar dated 10th September, 2004 passed in aforesaid Recovery Application No.96 of 2000, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri D.S.Vasavada, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Labour Court has materially erred in dismissing the application on the ground that the same is not maintainable. He has further submitted that the action of the respondent in denying the increments on the ground that the departmental inquiry is not concluded, is absolutely arbitrary and the same is illegal. It is also further submitted that non completing the departmental inquiry for a long time and denying the increments on that ground, the same is not justiciable and therefore, requested to allow the present Special Civil Application.

5. Per contra, Shri Hasmukh Thakkar, learned advocate appearing on behalf of the respondent management has submitted that when entitlement of the increments by the petitioner itself is disputed by the management, the recovery application is rightly dismissed by the Labour Court under Section-33-(C)(2) of the Industrial Disputes Act, 1947 as in the application under Section-33(C)(2), the entitlement is not required to be considered and powers under

Section – 33(C)(2) are of execution and therefore, it is requested to dismiss the present special civil application. He has also further submitted that for not completing the departmental inquiry proceedings, the petitioner himself is responsible as he preferred the writ petition being Special Civil Application No.4278 of 1990 and had requested for stay of the departmental proceedings as the criminal case was pending and the learned Single Judge of this Court allowed the said application restraining the management from proceeding further with the departmental proceedings till the proceedings in criminal case is concluded, therefore, the management was not at fault in not concluding the departmental inquiry immediately. Therefore, it is requested to dismiss the present special civil application.

6. Heard the learned advocates appearing on behalf of the parties.

7. This Court is not required to consider the issue with regard to pendency of the departmental inquiry proceedings and that who is responsible for delay.

The petitioner has approached the Labour Court by way of application under Section-33(C)(2) claiming claiming monetary benefits such as increments etc. And the same was disputed by the respondent management on the ground that the departmental inquiry proceedings were pending. Now whether the action of the respondent management denying the increments and other benefits on the ground of pendency of departmental proceedings is just and proper or not, is not required to be considered by the Labour Court in application under Section-33(C)(2) of the Industrial Disputes Act, 1947. As held by the Hon'ble Supreme Court as well as this Court in catena of judgments, powers under Section-33(C)(2) are of execution in nature and in such proceedings, rights are not to be established. Under the circumstance, the Labour Court is justified in rejecting the application on the ground that the Labour Court is not required to consider the action of the respondent management in denying the increments on the ground that departmental proceeding is pending, is just and proper or not. It is rightly observed by the Labour Court while rejecting the

application that it is for the petitioner to challenge the action of the respondent management in denying the increments on the ground of pendency of the departmental proceedings before appropriate forum. Under the circumstances, there is no illegality committed by the Labour Court in rejecting the application under Section-33(C)(2) by holding that the same is not maintainable. In above view of the matter, as such, no interference is called for at the hands of this Court while exercising the powers under Article 226 and 227 of the Constitution of India. Hence, the present special civil application is required to be rejected and is accordingly dismissed.

Rule is discharged with no order as to costs.

[M.R.Shah, J.]

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